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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 21.09.2022*

\+ **CUSAA 233/2019**

COMMISSIONER OF CUSTOMS (GENERAL) ..... Appellant

Through: Mr Harpreet Singh, Sr. Standing Counsel with Ms Suhani Mathur and Mr Jatin K. Gaur, Advocates.

versus

D. S. CARGO AGENCY ..... Respondent

Through: Mohd. Faraz Anees, Advocate.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This appeal has been preferred against the order dated 03.05.2019 of the Customs, Excise & Service Tax Appellate Tribunal [in short, 'Tribunal'].

2. *Via* the said order the Tribunal has rejected the appeal of the revenue on the ground that the appeal preferred under Section 129A of the Customs Act, 1962 [in short, 'the Act'] is not maintainable. It is on account of this reason that revenue has come up in appeal to this Court.

3. The record shows that the respondent, who is a Customs Broker had his licence suspended on 09/12.02.2018 on account of the infraction noted by the revenue while clearing the subject goods (i.e., spare parts of LED

TVs) against Bill of Entry No. 4354306 dated 11.12.2017. This Bill of Entry was filed by the respondent at ICD, Sonipat. It is this, which led to the examination of the consignment, and thereafter, as noticed above, suspension of the respondent's licence on 09/12.02.2018.

3.1 It is not in dispute that the suspension of the respondent's licence was confirmed on 12.03.2018 by the Commissioner of Customs (General), New Delhi. Thereafter, the respondent was served with a show cause notice dated 23.04.2018.

3.2 In terms of Regulation 20(5) of the Customs Broker Licensing Regulations, 2013 [in short, '2013 Regulations'] an Inquiry Officer was appointed, who submitted his report on 20.07.2018. The Inquiry Officer concluded that the respondent had violated the provisions of Regulation 17(9) and 11(b) of the 2013 Regulations.

3.3 The record also shows that thereafter, adjudication was held, which resulted in the Commissioner of Customs (Airport and General), New Delhi concluding *via* decision dated 17.10.2018 that the allegations made against the respondent could not be substantiated. In other words, the suspension of the respondent's licence stood revoked.

3.4 It is against this decision of the Commissioner of Customs (Airport and General) dated 17.10.2018 that an appeal was preferred by the revenue under Section 129A of the Act. The Tribunal, as alluded to hereinabove, dismissed the appeal and, as noted above, held it to be not maintainable.

4. Mr Harpreet Singh, who appears on behalf of the revenue, says that the Tribunal has committed an egregious error inasmuch as it has failed to notice that Section 129A of the Act allows "any person aggrieved" to prefer an appeal against a decision rendered by Commissioner of Customs. For this

purpose, our attention has been drawn by Mr Singh to Clause (a) of sub-Section 1 of Section 129A of the Act.

5. In this context, the revenue has proposed the following questions of law:

> *"(i) Whether Regulation 21 of the Customs Broker Licensing Regulations, 2013 prohibits an appeal by the revenue department in case it were aggrieved of an order passed under the said Regulations?*
> *(ii) Whether the learned CESTAT did not err in holding that the appeal filed by the appellant before it under Section 129A of the Customs Act, 1962 was not maintainable in view of Regulation 21 of the Customs Broker Licensing Regulations, 2013?"*

6. On the other hand, Mr Mohd. Faraz Anees, who appears on behalf of the respondent, has contended to the contrary.

6.1 According to Mr Anees, Section 129A of the Act has to be read with Regulation 21 of the 2013 Regulations. Mr Anees further says that the 2013 Regulations have been framed by the Central Board of Indirect Taxes & Customs [hereafter referred to as the 'Board'] in exercise of powers under Section 146(2)(g) of the Act.

6.2 It is Mr Anees's submission that appeal, if any, can be preferred to the Tribunal under Section 129A of the Act only in the following two situations:

(i) Against an order of suspension

(ii) Against an order revoking a licence.

6.3 Mr Anees thus submits that this is a case where the Commissioner of Customs (Airport and General) has set aside the order of suspension. The respondent, therefore, is not aggrieved. That being the position, revenue could not have preferred an appeal against order dated 17.10.2018, as correctly held by the Tribunal.

6.4 In support of his pleas, Mr Anees has relied upon the following judgments:

(i) ***Commissioner of Customs (General) v. Falcon India***, 2019 (368) ELT 35 (Del)

(ii) ***DHL Express (I) Pvt. Ltd. v CC (General), C. Brokerage Section*** 2018 (360) ELT 63 Bom.

7. Having heard the learned counsel for the parties, we are of the view that the questions of law proposed, stands already answered by a coordinate bench of this court in the ***Falcon India*** case.

8. It is important to note, as has been correctly argued by Mr Anees, that the 2013 Regulations have been framed by CBIC in exercise of powers vested in it under Section 146(2) (g) of the Act. The provision of appeal provided under Regulation 21 of the 2013 Regulations is aligned with sub-clause (g) of sub-section (2) of Section 146. For the sake of convenience, the said provision along with Regulation 21 is set forth after:

> ***Section 146. Licence for customs brokers***
> *(1) No person shall carry on business as a customs broker relating to the entry or departure of a conveyance or the import or export of goods at any customs station unless such person holds a licence granted in this behalf in accordance with the regulations.*
> *(2) The Board may make regulations for the purpose of carrying out the provisions of this section and, in particular, such regulation may provide for—*
> *xxx xxx xxx*
> *(g)* ***the appeals, if any, against an order of suspension or revocation of a licence, and the period within which such appeal shall be filed.***

"21. ***Appeal by Customs Broker.-*** ***A Customs Broker, who is aggrieved by any order passed by the Commissioner of Customs under these regulations, may prefer an appeal under section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of section 129 of the Act."***

[Emphasis is ours]

9. Furthermore, in order to appreciate the aforementioned provisions of the Act and the 2013 Regulations, one would also have to advert to the provisions of Section 129A of the Act. For the sake of convenience, the relevant portion of the same is extracted hereafter:

*"**129A. Appeals to the Appellate Tribunal** —*
(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—
(a) a decision or order passed by the Principal Commissioner of Customs or Commissioner of Customs as an adjudicating authority;
xxx. xxx xxx

10. A close perusal of Section 146(2) would show that the Board is empowered to make regulations for the purpose of carrying out the provisions of said section.

11. Furthermore, a perusal of clause (g) of sub-section (2) shows that, in particular, the regulations may provide for appeals, if any, against an order of suspension or revocation of licence and the period within which such appeals may be filed.

12. It is required to be noticed that sub-section (1) of Section 146 makes it clear the business of Custom Broker can be carried out only if the said person has a licence which is granted in accordance with the Regulations.

12.1 The language of sub-section (1) of Section 146 seems to suggest that although, a licence could be issued for one or more customs stations, the licence must indicate the customs station (s) for which it would operate.

13. Furthermore, the Board is, as noticed hereinabove, empowered to frame regulations for taking forward the intent of sub-section (1) of Section 146 and in this context, it is also empowered to provide for appeals, as indicated in clause (g) of sub-section (2) of Section 146.

13.1 Clause (g) of sub-section (2) of Section 146 clearly provides that appeals can be provided only against an order of suspension or revocation of licence. Besides this, the regulations are also required to provide for the period within which an appeal may be filed.

13.2 When this provision is read along with Regulation 21, it is crystal clear that the appeal can only be preferred by the Customs Broker. This is both logical and in consonance with the statutory provision as, in such a situation, only a Customs Broker would be the aggrieved person as the order of suspension or revocation of the licence will impact him and no one else.

13.3 A perusal of Regulation 21 would show that it links the right to prefer an appeal before the Tribunal to Section 129A of the Act. Therefore, the argument advanced on behalf of the revenue by Mr Singh that the expression any person aggrieved has to be given the widest meaning, in our view, cannot be accepted. Section 146(2)(g) of the Act read with Regulation 21 has restricted the scope of appeal, inasmuch as to the person who can prefer an appeal.

14. Interestingly, in the judgment of the Bombay High Court cited by Mr Anees, [i.e., the judgement in ***DHL Express***] the facts set out therein indicate that the petitioner therein made an application for grant of a new

Customs Broker Licence under the 2013 Regulations. Since the application for grant of licence was rejected, the aggrieved party preferred an appeal to the Tribunal. The Tribunal rejected the appeal on the ground that it was not maintainable under the provisions of Section 129A of the Act. Against the order of the Tribunal a statutory appeal was preferred to the Bombay High Court.

14.1. The Division Bench of the Bombay High Court sustained the order of the Tribunal and dismissed the appeal. The argument advanced before the Bombay High Court proceeded on same lines as what has been put forth before us by Mr Singh, which is that the expression “any person aggrieved” should, in essence, allow for an appeal to be filed by the unsuccessful applicant i.e., an applicant whose application for a new licence was rejected. The Division Bench of the Bombay High Court rejected this plea and *inter alia*, approved the dicta that the right of appeal can be restricted by statutory provisions.

15. We concur with the reasoning and logic articulated in the ***DHL Express*** case. Besides the aforementioned judgement, more closer to home, is the judgment of the coordinate bench of this Court in ***Falcon India*** case. It is a short judgment, which, in our view aligns with the view taken by us in the instant matter. For the sake of convenience, the relevant part of the judgment is extracted hereafter:

> *“2. It is argued by the Revenue that the expression adjudicating authority would include a Commissioner and all orders of the Commissioner parting character of a decision based upon consideration of rival contentions and positions, would therefore be appealable. It was submitted that the Regulations were framed under the Customs Act and consequently every order made under the Customs Act*

or Ordinance framed under the Regulations would be appealable.

xxx. xxx xxx

5. It is evident that appeals to the Tribunal are maintainable at the behest of "persons" who are aggrieved by any order of a Principal Commissioner or by Commissioner of Customs in her capacity as an "Adjudicating Authority". It is important to underline this aspect because but for Regulation 21 even applicants who were declined a licence would not be able to avail of the remedy of appeal to CESTAT. In other words, Regulation 21 constitutes an exception to tile general proposition that appeals lie only against adjudicatory orders. This Court is not concerned with the validity of Regulation 21 as it apparently exceeds the remedy of Section 129A of the Customs Act which is strictly confined to providing for appeals against adjudicatory orders. A salient and long settled principle of law is that appeal is a mandate of Statute. Unless the controlling parent enactment is expressed - or by force of necessary implication, it can be inevitably interfered with the subject mailer of a particular dispute, is appealable, appeals cannot be claimed as a mailer of right. In these circumstances, that the order of the Commissioner was styled as an order-in-original or even that it mistakenly pointed to an appellate remedy under Section 129A of the Customs Act, was not in any manner conclusive or whether such appeal was maintainable. This Court is therefore of the opinion that the CESTAT's decision is sound and does not call for an interference. No question of law arises. The appeal is therefore dismissed."

16. We respectfully agree with the view taken by the coordinate bench. As observed hereinabove, the expression "any person aggrieved" which finds mention in Section 129A of the Act cannot include the revenue, in

matters concerning issuance of licence. The appeal to the Tribunal, as per the statutory provisions referred to hereinabove, is restricted only to two situations i.e., against an order of suspension or revocation of licence. Clearly, it confines the right of appeal only to the Customs Broker. The Customs Broker having succeeded before the Commissioner of Customs (Airport and General), the revenue, in our opinion, cannot prefer an appeal.

17. The questions of law proposed by the revenue, in our view, cannot be entertained, as they stand concluded by the decision rendered by the coordinate bench of this Court in the ***Falcon India*** case.

18. At this state, Mr Singh says that an SLP has been filed against the judgment rendered by the Division Bench in the ***Falcon India*** case, in which notice has been issued.

18.1 Needless to add, if revenue were to succeed in the matter, the fate of the respondent will get determined by the decision in the ***Falcon India*** case.

19. Mr Anees says that he cannot but accept this position.

20. The appeal stands disposed of in the aforesaid terms.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

SEPTEMBER 21, 2022 / tr